

§ 839.1122

5 CFR Ch. I (1–1–05 Edition)

§ 839.1122 Does receipt of a one-time payment of retirement contributions as a death benefit prevent me from electing CSRS Offset?

You may still elect CSRS Offset if otherwise eligible. OPM will collect the amount of the one-time death benefit from any survivor benefits that are payable.

Subpart L—Discretionary Actions by OPM

§ 839.1201 If I took legal action against my employer because of a qualifying retirement coverage error, can OPM reimburse me for expenses related to my legal actions?

(a) The FERCCA allows OPM, in its sole discretion, to reimburse you for necessary and reasonable expenses you actually incurred while pursuing a legal or administrative remedy of your qualifying retirement coverage error.

(b) Necessary and reasonable expenses include actual amounts paid for attorney fees, court costs, expert witness fees, and other litigation expenses.

(c) You may not receive reimbursement under this section if you received a monetary award that compensated you for your litigation expenses.

(d) You must support your request for reimbursement with evidence that supports your claim.

(e) In determining what is a necessary and reasonable expense, OPM will consider:

- (1) The type and amount of the expense;
- (2) The circumstances that gave rise to the expense; and
- (3) Whether the expense is directly related to litigation concerning a retirement coverage error.

§ 839.1202 Can OPM waive repayment of a monetary award I received as resolution of the harm caused me by a qualifying retirement coverage error?

(a) The FERCCA allows OPM, in its sole discretion, to waive repayment of all or part of a settlement payment or court-ordered payment if you can demonstrate that CSRS Offset coverage does not fully compensate you for your losses.

(b) Your request for waiver must state why you believe waiver of repay-

ment is appropriate and include any evidence that supports your request.

§ 839.1203 Can OPM compensate me for my losses if I did not take any legal action against my employer, but did incur some expenses because of a qualifying retirement coverage error?

(a) The FERCCA allows OPM, in its sole discretion, to compensate you for a monetary loss that is a direct and proximate result of your retirement coverage error.

(b) Monetary losses include payments of additional Social Security taxes, payment of additional retirement deductions, and other out-of-pocket expenses that you incurred because of a retirement coverage error.

(c) You must substantiate your claim for losses with any evidence that supports your request.

(d) OPM cannot pay you for:

- (1) Claimed losses related to forgone contributions and earnings under the TSP, other than lost earnings on make-up contributions to the TSP as provided in subpart J of this part; and
- (2) Claimed losses related to any other investment opportunities.

§ 839.1204 On what basis will OPM review claims under this subpart?

(a) OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

(b) At OPM's discretion, OPM may request your employer to provide an administrative report. The report may include:

- (1) A description of the retirement coverage error;
- (2) A statement as to whether a settlement or other court-ordered award was made;
- (3) The employer's recommendation for resolution of the claim; and
- (4) Any other information your employer believes OPM should consider.

(c) The burden of proof that the criteria for approving a reimbursement of expenses is on you.

§ 839.1205 Does the Director of OPM review the claims?

The Associate Director for Retirement and Insurance and his or her

delegates have the authority to perform the Director's actions, as set out in this subpart (see section 2208 of the FERCCA).

§ 839.1206 How do I submit a claim under this subpart?

(a) No specific form is required. Your request must be in writing and contain the following information:

- (1) It must describe the basis for the claim and state the dollar amount you seek to receive;
- (2) It must include your name, address, and telephone number;
- (3) It must include the name, address, and telephone number of your current or last employer;
- (4) It must be signed by you; and
- (5) It must include any information you believe OPM should consider, such as cancelled checks or other evidence of amounts you paid.

(b) Send your claim to: Office of Personnel Management, Retirement and Insurance Service, ATTN: FC Section, Washington, DC 20415-3200

Subpart M—Appeal Rights

§ 839.1301 What if my employer determines my error is not subject to these rules?

(a) Your employer must provide you with a written decision. The decision must include the reason for the decision, and notice of your right to appeal the decision to the MSPB.

(b) If your employer determines that it cannot waive the time limit for making an election under § 839.612, the decision must inform you of your right to ask OPM to review the decision. OPM will advise you in writing of your appeal rights following its review of your employer's decision.

§ 839.1302 What types of decisions can I appeal?

(a) You can appeal to the MSPB a decision that affects your rights and interests under this part, except an OPM decision under subpart L (see § 839.1303). Some examples of decisions are:

- (1) Your employer's determination that your error is not subject to these rules;
- (2) Your employer's determination that you are not eligible to elect re-

tirement coverage under these rules; and

(3) OPM's denial of your request for a waiver of the time limit for making an election.

(b) You may not seek review of a decision under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

§ 839.1303 Are there any types of decisions that I cannot appeal?

Yes, OPM's decisions under subpart L (Discretionary Actions by OPM) are final and conclusive and are not subject to administrative or judicial review.

§ 839.1304 Is there anything else I can do if I am not satisfied with the way my error was corrected?

(a) Except for claims under subpart L (see § 839.1303), and after exhausting your administrative remedies as set out in this subpart, you may bring a claim against the Government under section 1346(b) or chapter 171 of title 28, United States Code.

(b) You may also bring a claim against the Government under any other provision of law if your claim is for amounts not otherwise provided for under these rules.

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